

AN ORDINANCE BY THE
ZONING COMMITTEE

NO. 08-0-2071
2-08-78

AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES, PART 16, ZONING, OF THE CITY'S LAND DEVELOPMENT CODE FOR THE PURPOSE OF CREATING A NEW PLANNED DEVELOPMENT ZONING DISTRICT, ENTITLED "PLANNED DEVELOPMENT-CONSERVATION SUBDIVISION (PD-CS)" AND ASSOCIATED REGULATIONS, AND FOR OTHER PURPOSES.

WHEREAS, the Metropolitan North Georgia Water Planning District developed a model ordinance for conservation subdivisions to promote the protection and improvement of the State's water quality, and this model ordinance has been adopted by the State of Georgia which requires that every jurisdiction located within the metropolitan area of North Georgia adopt a conservation subdivision ordinance in substantial compliance with the model ordinance by December 31, 2008; and

WHEREAS, the city could incur fines and other penalties, including impacts to its water and wastewater permits, that may be assessed if the city does not adopt a conservation subdivision ordinance by the state imposed deadline, referenced above; and

WHEREAS, the city finds that the adoption of an ordinance creating a new zoning overlay district for conservation subdivisions will promote the preservation, enhancement and improvement of the city's water quality within the city's watersheds, protect valuable environmental resources, reduce the cost of installation and maintenance of infrastructure, provide for open space and greenway connectivities, promote pedestrian and other passive recreational pathways, and ensure the protection and preservation of wildlife habitats, historical and archaeological sites; and

WHEREAS, zoning is a matter within the purview of local governments pursuant to Article IX, Section II, Paragraph IV of the Constitution of the State of Georgia; and

WHEREAS, the Official Code of Georgia Annotated, § 36-66-1, *et seq.* provides procedures and regulations for the adoption of zoning laws; and

WHEREAS, the Land Use Development Code, Part 16. Zoning was adopted in 1977 ("Zoning Code"), as thereafter amended from time to time, which provides for the zoning classifications and regulations for the City of Atlanta; and

WHEREAS, the city has determined that this Ordinance and Amendment to the city's Zoning Code promotes the health, safety, morals, convenience, order, prosperity and general welfare of the present and future inhabitants of the City of

Atlanta and will have a reasonable economic use of property suitable in view of the use and development of property in the city; and

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

Section 1. The Zoning Code is hereby amended to include a new zoning district chapter, entitled “Planned Development-Conservation Subdivision (PD-CS)”, which shall be set forth as follows:

CHAPTER 19E. PD-CS PLANNED DEVELOPMENT—CONSERVATION SUBDIVISION DISTRICT REGULATIONS

Sec. 16-19E.001. Scope of provisions and purpose.

The following regulations and requirements apply to PD-CS Planned Development—Conservation Subdivision Districts, defined for purposes of these regulations as planned development districts primarily for the following purposes:

- (1) To provide a residential zoning overlay district that is density neutral and permits flexibility of design in order to promote environmentally sensitive and efficient uses of the land and to provide for the preservation of greenspace in perpetuity;
- (2) To enhance land, water, air, and tree resources by minimizing the area of land disturbance; reducing impervious surfaces, reducing soil erosion and stormwater runoff, optimizing stream buffers, preserving tree cover, and encouraging retention and protection of greenspace;
- (3) To preserve in perpetuity archaeological or historic sites, scenic views, and sensitive natural resources such as floodplains, wetlands, streams, steep slopes, woodlands, and wildlife habitat;
- (4) To maintain the total number of dwellings in a density-neutral manner, and to provide a process that allows all interested parties an opportunity to verify that the proposal is in compliance with this ordinance and related regulations;
- (5) To encourage development on the least environmentally sensitive soils, and to reduce the amount of public infrastructure and associated costs borne by the city;
- (6) To encourage interaction in the community and reduce impervious surfaces by clustering dwellings and orienting them closer to the street, providing public gathering places, and encouraging use of parks and community facilities as focal points in the neighborhood;

- (7) To promote interconnected greenways which provide pedestrian linkages, recreational opportunities, and wildlife corridors throughout the city and adjacent jurisdictions; and
- (8) To encourage designs that reduce traffic, speed, and reliance on automobiles, and to encourage walking, biking, and public transportation connectivity to neighboring communities, businesses, and facilities.

Sec. 16-19E.002. PD-CS districts: Where permitted; density calculations; parcel eligibility

- (1) PD-CS districts may hereafter be established in accordance with general procedures and requirements set forth in chapter 19, above, within any "R" zoning district except RLC and RG, with appropriate densities based on the existing zoning as set forth in this section. Only parcels served by public sanitary sewer may be eligible for rezoning to PD-CS.
- (2) The maximum number of lots allowed in a PD-CS district shall be determined by dividing the gross area of the parcel by the minimum lot size specified for the existing zoning district of the parcel at time of the application. In making this calculation, the following shall not be included:
 - (a) Slopes of 2:1 ratio or greater in the amount of 5,000 square feet contiguous area or greater;
 - (b) any part of the parcel which is in the 100-year floodplain;
 - (c) bodies of open water over 5,000 square feet contiguous area;
 - (d) wetlands as defined by the Army Corps of Engineers pursuant to the Clean Water Act; or,
 - (e) existing and planned right-of-way or utility easements.
- (3) Minimum parcel size. Only parcels having a minimum of two (2) acres shall be eligible for consideration for rezoning to a conservation subdivision overlay district.
- (4) Environmental Criteria. Only parcels where one or more of the following distinctive environmental features would limit the number of lots which could be created under a standard subdivision configuration on the buildable area of the entire tract by 20% or more if not preserved shall be eligible for consideration to be considered for a conservation subdivision zoning. The lot yield calculation required by this section shall be subject to the limitations set forth in section 16-19E.002, provided however that 10% of the property burdened by an environmental criteria that renders property unbuildable may be added back for the purpose of that calculation:
 - (a) Slopes of 2:1 ratio or greater in the amount of 5,000 square feet or greater;
 - (b) Streams and other surface waters and their applicable buffer zone;
 - (c) Wetlands and their applicable buffer zones as defined by U.S. Army Corps of Engineers regulations pursuant to the Clean Water Act;

- (d) 100-Year Floodplains;
- (e) Populations of endangered or threatened species, as designated pursuant to the Endangered Species Act, or habitat for such species;
- (f) Archaeological or historic sites that remain primarily in an undeveloped state;
- (g) Abandoned cemeteries;
- (h) Existing healthy, native forests within a contiguous area of at least one acre;
- (i) Significant natural features and scenic viewsheds such as ridge lines, peaks and rock outcroppings, particularly those that can be seen from public roads; or
- (j) Properties located adjacent to existing trails, public parks or greenspace that provide for access to improve connectivity to such areas.

Sec. 16-19E.003. Permitted principal uses and structures.

- (1) Single family detached dwellings.
- (2) Private noncommercial social, recreational and cultural facilities such as game rooms, golf courses, swimming pools, marinas, tennis courts, and similar facilities.
- (3) Broadcasting towers and line-of-site relay devices for telephonic, radio or television communications as contemplated by Section 16-25.002(3)i.(iv)(i).
- (4) Personal care homes are permitted only by special use permit.

Sec. 16-19E.004. Permitted accessory uses and structures.

Uses and structures which are customarily accessory and clearly incidental to permitted uses and structures, with parking provided as appropriate, also to include devices for the generation of energy such as solar panels, wind generators and similar devices.

Sec. 16-19E.005. Developmental controls.

The following minimum developmental controls shall apply all uses approved by special permits as well as permitted uses.

- (1) Minimum lot requirements. There is no minimum square footage size or frontage requirement for each lot.
- (2) Minimum yard requirements. The following minimum yard requirements shall apply to all uses approved by special permits as well as permitted uses:
 - (a) Front yard: There shall be a front yard having a depth of not less than 5 feet between the street and the front elevation of the primary structure.
 - (b) Side yard: There shall be two side yards, one on each side of the primary structure and any accessory structure, each having a width of not less than 5 feet.

- (c) Rear yard: there shall be a rear yard of not less than 5 feet.
 - (d) Notwithstanding (a), (b), and (c), any required yard abutting another zoning district or a public street existing at the time of application, shall comply with any yard requirements of the existing zoning district the parcel at the time of the application.
 - (e) *Maximum floor area ratio*: Maximum floor area ratio shall be the same as the existing zoning district of the parcel at the time of the application.
 - (f) *Maximum lot coverage*: Maximum lot coverage shall be the same as the existing zoning district of the parcel at the time of the application.
- (3) Maximum height. No primary structure may exceed 35 feet. No accessory structure shall exceed 20 feet.
 - (4) Minimum off-street parking. No minimum parking requirements shall apply.
 - (5) Independent driveway. Independent driveways are not required. Common or shared driveways shall be allowed. Any driveway constructed shall meet fire department minimum requirements.

Sec. 16-19E.006. Site planning.

Site planning within the districts shall provide protection of the development from potentially adverse surrounding influences, and protection of surrounding areas from potentially adverse influences from within the development.

- (1) *Principal vehicular access points*: Principal vehicular access points shall be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Merging and turnout lanes and/or traffic dividers and extra width of the approach street shall be required where existing or anticipated heavy flows indicate need. In general, minor streets shall not be connected with streets outside the districts in such a way as to encourage use of such minor streets by substantial amounts of through traffic.
- (2) *Access for pedestrians and cyclists*: Access for pedestrians and cyclists entering or leaving the district shall be by safe and convenient routes. Such access need not be adjacent to, or limited to the vicinity of vehicular access points. Where there are crossings of pedestrian ways and vehicular routes at edges of planned developments, such crossings shall be safely marked and controlled; and where such ways are exposed to substantial vehicular traffic at edges of districts, safeguards may be required to prevent crossing except at designated points.
- (3) *Protection of visibility for automotive traffic, cyclists and pedestrians*: Protection of visibility for automotive traffic, cyclists and pedestrians shall be as generally provided at section 16-28.008(9), "Visibility Clearance at Intersections." In addition, where there is pedestrian or bicycle access from within the development to a street at its edges by paths or across yards or other open space without a barrier to access to the street, no material impediment to visibility, as defined therein, shall be created or maintained within areas appropriate to the circumstances of the case, but in any event within a visibility triangle equivalent to that required at section 16-28.008(9).
- (4) *Fences, walls or vegetative screening at edges of PD-CS districts*: Fences, walls or vegetative screening at edges of PD-CS districts may be provided where needed to

protect residents from undesirable views, lighting, noise or other off-site influences, or to protect occupants of adjoining residential districts from similar adverse influences within the PD-CS district. In particular, extensive off-street parking areas and service areas for loading and unloading vehicles other than passenger, and areas for storage and collection of refuse and garbage shall be screened.

(5) *Streets, drives, parking and service areas:* Streets, drives, parking and service areas shall provide safe and convenient access to dwelling units and general facilities, and for service and emergency vehicles. Streets shall not be so laid out as to encourage outside traffic to traverse the development on minor streets, nor occupy more land than is required to provide access as indicated, nor create unnecessary fragmentation of the development into small blocks. Interior streets, whether intended for private ownership and maintenance or public dedication and use, shall be configured and constructed as required by the Department of Public Works. No interior streets shall be dedicated to the city, unless the streets meet all standards and approvals as required by the Department of Public Works.

(6) *Internal relationships, site planning:* The site plan shall provide for safe, efficient, convenient and harmonious groupings of structures, uses and facilities, for appropriate relation of space inside and outside buildings to intended uses and structural features, and for preservation of desirable natural features and minimum disturbance of natural topography.

(7) *Vehicular access to dwellings and other uses:* Vehicular access from off-street parking and service areas may be directly to the streets from the sites of individual parcels. Determination of number of parcels served shall be based on normal routes of traffic anticipated in the development.

(8) *Vehicular access to other streets or portions of streets:* Vehicular access to other streets or portions of streets from off-street parking and service areas shall be so combined, limited, located, designed and controlled as to channel traffic from and to such areas conveniently, safely and in a manner which minimizes marginal traffic friction and promotes free flow of traffic on streets without excessive interruption.

(9) *Ways for pedestrian and cyclists; use by emergency or service vehicles.* Walkways shall form a logical, safe and convenient system, approved by the department of public safety for pedestrian access to all dwelling units, project facilities, and principal off-site pedestrian destinations. Walkways to be used by substantial numbers of children and routes to school or other destinations shall be so located and safeguarded as to minimize contact with normal automotive traffic. If substantial bicycle traffic is anticipated, bicycle paths shall be coordinated with the walkway system. Street crossings shall be held to a minimum on such walkways, shall be located and designed to promote safety, and shall be appropriately marked and otherwise safeguarded.

(10) *Protection of visibility for automotive traffic, cyclists and pedestrians.* Protection of visibility for automotive traffic, cyclists and pedestrians shall be as provided in section 16-19E.007(c) above.

(11) *Water, Sanitary Sewer and Storm Water Utilities.* All water, sanitary sewer and storm water utilities, whether intended for private ownership and maintenance or public dedication and use, shall be configured and constructed as required by the Department of Watershed Management. No water, sanitary sewer or storm water

facilities shall be dedicated to the city, unless such facilities meet all standards and approvals required by the Department of Watershed Management.

(12) *Infrastructure.* Prior to the issuance of any building permit, all infrastructure, private or public, shown on approved site plans shall be installed.

Section 16-19E.007.Application.

All applicants seeking a rezoning to this district shall be required to submit an Existing Conditions Site Plan and a Conservation Subdivision Site Plan, as defined in this ordinance, for review and approval in conjunction with submitting a rezoning application.

(1) All applicants shall be required to hold a pre-application meeting with representatives from the Bureau of Planning and Community Development, Department of Watershed Management, and Department of Public Works and shall present a general location map, which may include an aerial photograph or similar depiction, for the purpose of reviewing procedures, requirements and preliminary assessment of the site for eligibility and feasibility for a conservation subdivision. This pre-application conference may occur in the same manner as provided in Sec. 15.07.005(c).

(2) Existing Conditions Site Analysis Plan. At the time of application for rezoning to a PD-CS district, applicant shall submit an Existing Conditions Site Analysis Plan, sealed by an engineer or landscape architect registered in the State of Georgia, designating the following site features and information based on a survey prepared by a Georgia licensed surveyor:

- (a) Property boundaries;
- (b) Topographic contours of no more than 2-foot intervals;
- (c) Streams, lakes, rivers, waters of the State, 100-year floodplains, applicable buffers, and wetlands, including source information;
- (d) Identification of tree lines, natural woodland, open fields or meadows, and peaks or rock outcroppings;
- (e) Identification of scenic vistas, historic or archaeological sites, wildlife habitats or other significant environmental features;
- (f) Identification of steep slope areas, defined as slopes having a 2 to 1 ratio or greater;
- (g) Identification of greenspace, trails or public parks adjacent to the property subject to the rezoning application;
- (h) Identification of threatened or endangered plant species, as listed by the Georgia Department of Natural Resources;
- (i) General soil types and vegetation characteristics;
- (j) Existing roads, buildings, structures and utility easements; and
- (k) Identification of the locations of populations of endangered or threatened species, as designated pursuant to the Endangered Species Act, and habitats for such species.

(3) Conservation Subdivision Site Plan. Using the inventory outlined in the Existing Conditions Site Plan, and applying any conservation subdivision design standards as may be specified by the Bureau of Planning, the applicant shall submit a conservation subdivision concept plan including the following information at a scale of no less than one inch equals fifty (50) feet:

- (a) Greenspace area indicating which areas are to be permanently protected;
- (b) Boundaries of areas to be developed and proposed street and lot layout;
- (c) Number of lots proposed and an explanation of how this number was calculated, in chart format, in accordance with Sec. 16-19E.005;
- (d) Proposed locations of water supply, sewer lines, and stormwater management facilities and other above-ground or below-ground utilities located on parcel subject to the application, including a designation of whether such facilities are intended for private ownership and maintenance or public dedication and use;
- (e) Preliminary development envelopes showing all impervious surfaces including, but not limited to, paved areas, trails, buildings, grading, and lawns (if applicable);
- (f) Proposed methods for ownership, maintenance, and permanent protection of the greenspace;
- (g) Delineations of Primary and Secondary Greenspace areas labeled by type as described in Section 6 of this ordinance;
- (h) Designation of any connections of proposed greenspace to existing greenspace, trails, and public parks, located within 1,000 feet of the property line of the property subject to the rezoning application;
- (i) Potential connections with existing greenspace and trails;
- (j) Planned greenspace;
- (k) Proposed street and lot layout; and
- (l) A separate site plan layout of lots and street configurations for a conventional subdivision allowed under the existing zoning district of the parcel at the time of application.

Amendments to a final site plan for a PD-CS shall follow the procedures and requirements set forth in Section 16-19.005.

(4) Other requirements. All PD-CS districts shall comply with all other applicable laws, specifically including without limitation the City of Atlanta Tree Ordinance, Sec. 158-26, *et seq.* and the City of Atlanta Stream Buffer Ordinance, Sec. 74-300, *et seq.*

Sec. 16-19E.008. Greenspace Requirements.

(1) Required Greenspace. Greenspace shall be required in a conservation subdivision, and must comprise at least twenty-five (25) percent of the gross area of the parcel. Residential yards, required or otherwise unrequired, shall not count toward meeting the minimum required amount of greenspace.

(2) Contiguous Greenspace. At least seventy-five percent (75%) of the greenspace shall be contiguous with a minimum width of fifty (50) feet; however, irregularly shaped parcels of less than fifty (50) feet in width may be allowed if so approved by the Commissioner of the Department of Planning and Community Development or the Commissioner's designee(s).

(3) Primary Greenspace. The following environmental features shall be included within the designated greenspace when they are present on the parcel:

- (a) Slopes of 2:1 ratio or greater and of at least 5,000 square feet contiguous area;
- (b) Streams and other surface waters and their applicable buffers;
- (c) Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act and the required buffer surrounding such wetlands;
- (d) The 100-year floodplain;
- (e) Populations of endangered or threatened species, as designated pursuant to the Endangered Species Act, or habitats for such species; and
- (f) Archaeological sites or cemeteries.

(4) Secondary Greenspace. The following features are desirable and may be included within greenspace:

- (a) Existing healthy, native forests of at least one contiguous acre and consisting of mature, healthy trees;
- (b) Significant natural features and scenic viewsheds such as ridge lines, peaks, and rock outcroppings;
- (c) Land adjacent to a public park or other protected greenspace;
- (d) New and existing trails that connect the tract to neighboring areas;
- (e) Meadows, woodlands, natural undisturbed areas, wildlife corridors, game preserves, or similar conservation-oriented areas;
- (f) Important historical sites on land that is primarily in an undeveloped or natural state; and
- (g) Prime agricultural lands.

(5) Impervious Surfaces. The total area of impervious surfaces within the greenspace shall be limited to fifteen percent (15%) of the total greenspace area. Impervious surfaces shall be limited to facilities that serve the permissible activities within the greenspace as stated in this ordinance.

(6) Permissible Activities within the greenspace. Greenspace shall remain mostly undeveloped and maintained in its natural state. The following activities are permitted uses within the greenspace:

- (a) Passive recreational activities are permitted within the greenspace, including, for example, hiking, fishing, running, jogging, biking, walking, skating, bird watching, riding horses, observing or photographing nature, picnicking, playing non-organized sports, engaging in free play, or other types of passive

recreation so long as such activities are otherwise permitted under applicable laws, rules and permits.

(b) Multi-use trails may be constructed for non-motorized recreational activities listed in (a) above.

(c) Community gathering places, which shall be defined for the purposes of this ordinance as areas that encourage picnicking, community activities, or other social activities.

(d) Utility Easements.

(i) A maximum of twenty percent (20%) of the greenspace may be comprised of below-ground utility easement areas such as, but not limited to, underground gas, water, power or sewer facilities;

(ii) Utility easement areas in greenspace must remain unfenced and open, unless safety concerns dictate otherwise.

(iii) No above ground utilities or easements for above ground utilities shall be allowed within the greenspace area.

(e) Grassed Open Fields.

(i) Grassed open fields may be included in the Secondary Greenspace and counted toward the minimum amount of required greenspace if reasonably level before any grading.

(ii) Grassed playing fields shall not include ball fields for organized league play. No outdoor flood lighting, bleachers, concession areas, or other amenities supporting formal active recreation areas shall be permitted within the greenspace.

(f) Stormwater Management Facilities.

(i) Stormwater management facilities may be constructed within the Greenspace as an amenity or as a water quality improvement measure. Only stormwater management facilities that consist primarily of bioretention are permitted within the greenspace. Bioretention includes, but is not limited to constructed wetlands, infiltration trenches, enhanced swales, sand filters, grass channels, filter strips, permanent lakes, and retention ponds. Stormwater management facilities shall be designed, constructed, and maintained in accordance with applicable city design standards for such facilities. Stormwater management facilities located within the greenspace shall be constructed of natural materials and shall promote the purposes and intentions of this ordinance and preserve the natural state of the greenspace.

(ii) No more than fifty (50) percent of the land area located within a proposed stormwater management facility or permanent lake shall be counted toward meeting the minimum required amount of greenspace.

(iii) Installation of all stormwater management facilities shall be in accordance with the standards set forth in the Georgia Stormwater Management Manual and City of Atlanta regulations, as may be amended.

(g) Community gardens;

(h) Garden composting areas, provided that the composting is adequately enclosed and contained in order to prevent any such materials from entering stormwater systems or waterways.

(4) Prohibited Activities. The following are prohibited within or with regards to the greenspace:

- (a) Active recreation areas, fields, or courts;
- (b) Golf courses;
- (c) Any alteration of the surface of the land, including, without limitation, grading or the excavation or removal of soil, sand, gravel, rock, peat, or sod; provided, however, that minimal grading is allowed within the greenspace to provide for the development of the greenspace in accordance with the intended uses and purposes of the greenspace, as may be included in an approved zoning application and as may be otherwise permitted by this ordinance.
- (d) Exploration for, development and extraction of minerals and hydrocarbons by any surface mining method or any other method that may significantly impair or interfere with the conservation values of the greenspace;
- (e) Any industrial use of or activities;
- (f) Any use or activity that would interfere with the preservation of the greenspace, including, but not limited to depletion, pollution, or degradation of soils, surface waters, subsurface waters, air, or other environmental aspects of the greenspace;
- (g) Processing, storage, dumping, burning, burying, or otherwise disposing of wastes, refuse, and debris including but not limited to household waste, yard waste, construction waste, and hazardous materials;
- (h) Other prohibitions as desired by the applicant and recorded on the legal instrument providing for permanent protection of the greenspace.

(5) Maintenance of greenspace.

(a) The owner of the greenspace shall be responsible for the continuous maintenance of the greenspace and enforcement of the use restrictions in accordance with this ordinance, any zoning conditions, and the final approved site plan. The City shall incur no responsibility or liability for improperly maintained greenspace.

(b) Greenspace shall be maintained as necessary to keep all areas that are open to public access or adjacent to areas of public access, properly trimmed and free of dead limbs, dead trees, or any other hazardous natural or human-made conditions.

(c) Greenspace shall be at all times maintained in a manner consistent with the uses and purposes intended. For example, preserved naturally wooded areas without public trails should be maintained in a natural state, whereby public trails should be free and clear from any nearby dead trees or limbs and remain free of obstructions. Any greenspace owned by the City shall be maintained in accordance with the applicable standards provided by the Commissioner of the Department of purview over the greenspace area. All City ordinances pertaining to the regulation of property maintenance shall apply to the maintenance of the greenspace, including without limitation, control and prevention of invasive plant species and hazardous conditions.

(6) City's third party right to enforce; lien. The city shall have third party rights to enforce the terms of this ordinance within any greenspace area designated within a finally approved conservation subdivision. All costs incurred by the city for enforcing this ordinance within any greenspace shall be assessed against the greenspace property and shall constitute a lien on the property if such costs are not paid within 60 days of receipt of notice of such costs.

(7) Improvements to Greenspace.

(a) greenspace may be improved to allow for any of the permitted uses in accordance with the provisions of this ordinance. Allowed improvements may specifically include reforestation, pasture management, stream buffer re-vegetation, stream restoration projects, removal of invasive plant species, wetlands management, or wetlands restoration projects.

(b) Historic buildings or structures may be restored periodically and maintained as necessary; provided, however, that restoration and maintenance procedures do not negatively impact water quality or sensitive environmental resources located on the parcel.

(c) All improvements to the greenspace shall require any permits or approvals as may be applicable.

Sec. 16-19E.09. Ownership and Permanent Protection of Greenspace.

(1) Ownership of greenspace. Each applicant shall provide a legal mechanism for unified control of the entire greenspace parcel, under which all land to be held in common and used for greenspace shall be protected in perpetuity consistent with the finally approved plat, zoning conditions and this ordinance. Such legal mechanism shall be approved by the City Attorney in conjunction with the Office of Enterprise Asset Management, which shall be approved prior to approval of the final site plan. Acceptable legal mechanisms may include a conservation easement or a deed with deed restrictions, covenants or other conditions that are consistent with this ordinance and protects the greenspace in perpetuity. All deeds and conservation easements shall provide for the right of the City to have third party enforcement of the management of the greenspace consistent with this ordinance. The developer shall record the deed to the greenspace prior to, or concurrent with, the recording of the final subdivision plat. Required greenspace shall be owned in fee-simple by one of the following organizations or entities:

(a) A mandatory property owners' association governed by the Georgia Property Owners' Association Act (O.C.G.A. §§ 44-3-220, *et seq.*) and abiding by the minimum bylaws and covenant required by this ordinance.

(b) A qualified conservation organization recognized by Federal Treasury Regulation Section 1.170A-14(c)(1). Qualified organizations recognized by this Treasury Regulation include, but may not be limited to, governmental entities, certain publicly supported charities, local and national land trusts, or other conservation groups that are organized or operated primarily or substantially for one of the conservation purposes specified in the Internal Revenue Code. If a deed is recorded or an easement conveyed in favor of a governmental entity, formal acceptance by the governmental entity or qualified conservation

organization shall be obtained prior to the recording of the covenant or conveyance of the easement as defined in the Georgia Uniform Conservation Easement Act (O.C.G.A. § 44-10-1 *et seq.*).

(c) Other entities approved in advance by the Commissioner of the Department of Planning and Community Development or the Commissioner's designee(s).

(d) The City, only if such greenspace is dedicated to and accepted by the City in fee simple interest. No dedication of greenspace to the City shall be effective, unless the city determines, in its sole discretion that ownership of greenspace is in the City's best interest, in which case acceptance of such dedication must be made in accordance with such legal documents, conditions, and procedures as approved by the City. Consideration of dedicated greenspace may include extensions of existing public parks, trails or greenspaces.

(2) Property Owners' Association. If a property owners' association will own the greenspace, the following provisions, at a minimum, shall be included in the bylaws or covenants:

(a) Governance by the Georgia Property Owners' Association Act (O.C.G.A. § 44-3-220, *et seq.*) or a successor to that Act that grants lien rights to the association for maintenance expenses and tax obligations;

(b) Responsibility for insurance and taxes on the greenspace;

(c) Automatic compulsory membership in the property owners' association of all lot purchasers and their successors;

(d) A fair and uniform method of assessment and collection/payment for dues, maintenance, and related costs;

(e) Conditions and timing of transferring control of the association from the developer to the lot owners;

(f) Equal access and right of use to all greenspace for all property owners;

(g) Perpetual and continued maintenance liability for the required greenspace;

(h) Filing of all required covenants, declarations, and restrictions with the Clerk of the Superior Court of Fulton or DeKalb County, whichever is applicable; and

(i) Prior arrangement for the transfer of ownership of the greenspace to a qualified conservation organization as described in Section 7(5)(b)(ii) of this ordinance in the case of the property owners' association dissolving; and

(j) Notice of the city's third party right to enforce its ordinance within the greenspace.

(k) Where easement(s) exist or are required for public access including without limitation multi-use trail developments and pedestrian pathways.

(3) Conservation Easements. A conservation easement shall meet the minimum requirements of this ordinance and the Georgia Uniform Conservation Easement Act O.C.G.A. §§ 44-10-1 *et seq.*, and additionally, shall abide by all of the following:

- (a) The easement shall list the fee-simple owner(s) of the greenspace, the holder of the conservation easement, and the City of Atlanta as a third party beneficiary with rights to enforce the easement.
- (b) The easement shall identify the party or parties responsible for maintenance of the greenspace and any facilities located thereon.
- (c) The easement shall clearly identify the boundaries of the greenspace by survey and a metes and bounds legal description.
- (d) The easement shall describe the features of the greenspace that should be permanently protected and clearly delineate the primary and secondary conservation areas.
- (e) The easement shall clearly list all restrictions required in Sec. 16-19E.08 of this ordinance and any other restrictions of the property as may be imposed consistent with this ordinance.
- (f) The easement shall provide for inspections of the property by the holder of the easement and the City of Atlanta.
- (g) The easement shall provide for amendments only with the express written permission of the fee-simple owner of the greenspace, the holder of the conservation easement, and the City of Atlanta.
- (h) The easement may include other restrictions in addition to those listed in Sec. 16-19E.08 of this ordinance as desired by the applicant.
- (i) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a license, permit, or order for any demolition, alteration, or construction on the property.
- (j) The easement shall state that a legal mechanism exists for notice of deficiencies in maintenance of the land held as greenspace, correction of these deficiencies, and assessment and liens against the properties for the cost of the correction of these deficiencies by a third party or the city.

(4) GIS Survey. The applicant shall submit, as part of the final submittal, a survey of the conservation subdivision site plan in an electronic format that is compatible with the City's GIS programs in conjunction with the application. Survey shall include the metes and bounds of the conservation greenspace and its total size.

SECTION 2. All ordinances in conflict with this ordinance shall be waived to the extent of the conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/ Human Resources

Caption: AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES, PART 16, ZONING, OF THE CITY'S LAND DEVELOPMENT CODE FOR THE PURPOSE OF CREATING A NEW PLANNED DEVELOPMENT ZONING DISTRICT, ENTITLED "PLANNED DEVELOPMENT-CONSERVATION SUBDIVISION (PD-CS)" AND ASSOCIATED REGULATIONS, AND FOR OTHER PURPOSES.

Council Meeting Date: January 5, 2008

Requesting Dept: Department of Planning and Community Development
and Department of Watershed Management

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to create a new zoning district for conservation subdivisions, which is in substantial form with the model ordinance of the Metropolitan North Georgia Water Planning District and is required to be adopted by the State of Georgia.

2. Please provide background information regarding this legislation.

The Metropolitan North Georgia Water Planning District adopted a model ordinance for conservation subdivisions which was adopted and included as a requirement for all jurisdictions located with the area served by the Metropolitan North Georgia Water Planning District to promote and improve water quality in the area. This ordinance has been developed through an effort led by the Department of Watershed Management and the Department of Planning and Community Development with the cooperation and input of the City's Green Team. If this ordinance is not adopted the Department of Watershed Management will face potential fines, permitting restrictions and other penalties that may be deemed appropriate by the State of Georgia.

3. If Applicable/Known: N/A

- (a) Contract Type (e.g. Professional Services, Construction Agreement, etc):**
- (b) Source Selection:**
- (c) Bids/Proposals Due:**
- (d) Invitations Issued:**
- (e) Number of Bids:**
- (f) Proposals Received:**
- (g) Bidders/Proponents:**
- (h) Term of Contract: Permanent (easement)**

4. Fund Account Center: N/A

5. Source of Funds: N/A

6. Fiscal Impact: N/A

7. Method of Cost Recovery: N/A

This Legislative Request Form Was Prepared By: Renee M. Shepherd, Asst. City Attorney